

Belmar/PAG Limited Partnership

v.

City of Nashua

Docket No. 21029-04PT

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Bellavance Realty Corp.

v.

City of Nashua

Docket No. 20916-04PT

--

Community Bank & Trust Co.

v.

City of Nashua

Docket No. 20924-04PT

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AGC Corporation

v.

Town of Londonderry

Docket No. 20984-04PT

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Chittenden Corp. D/B/A Ocean Bank

v.

Town of Raymond

Docket No. 21036-04PT

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Chittenden Corp. D/B/A Ocean Bank

v.

Town of Stratham

Docket No. 21038-04PT

CONSOLIDATED ORDER

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I. Introduction

A. Issues Presented

The board received separate “motions to dismiss” six tax year 2004 appeals involving certain taxpayers (Belmar/PAG Limited Partnership, Bellavance Realty Corp., Community Bank & Trust Co., AGC Corporation and Chittenden Corp. d/b/a Ocean Bank) in four municipalities (the City of “Nashua” and the Towns of “Londonderry”, “Raymond” and “Stratham”). The common thread to these motions is the same taxpayer representative (Mark Lutter) and his now admitted failure to have the taxpayers sign the respective abatement applications submitted to each municipality – a violation of TAX 203.02 (d), which provides:

Signature. The Taxpayer shall sign the Abatement Application. An attorney or Agent shall not sign the Abatement Application for the Taxpayer. An attorney or Agent may, however, sign the Abatement Application along with the Taxpayer to indicate the attorney's or Agent's representation.

See also RSA 76:16:

I. Selectmen or assessors, for good cause shown, may abate any tax assessed by them . . . Any person aggrieved by the assessment of a tax . . . may, by March 1, following the date of notice of tax under RSA 76:1-a, and not afterwards, apply in writing on the form set out in paragraph III to the selectmen or assessors for an abatement of the tax. . . .

[and]

III. The abatement application form shall be prescribed by the board of tax and land appeals. The form shall include the following and such other information deemed necessary by the board:

- (a) Instructions for completing and filing the form . . .
- (g) A place for the applicant's signature with a certification by the person applying that the application has a good faith basis and the facts in the application are true.

The requirement that each taxpayer sign the abatement application is also stated in the "RSA 76:16 Abatement Application to Municipality" form submitted by Mr. Lutter to the municipality for each taxpayer: Section G of the form emphasizes (in capitals and bold face) that the "applicant" (taxpayer) "**MUST** sign the application" and that signing is a certification and swearing "under the penalties of RSA ch. 641 [that] the application has a good faith basis, and the facts stated are true to the best of my/our knowledge."

The key issues for determination by the board are whether the dismissal motions should be granted and what further remedies, if any, may be appropriate in light of the violations of the above statute and rules by the taxpayers' representative/consultant, Mr. Lutter. As noted in the board's December 16, 2005 Order noticing the hearing, Mr. Lutter is an "Agent" as defined in TAX 102.03.

The evidence presented confirms that Mr. Lutter (and someone employed by him), but not each taxpayer, or any of its officers or employees, prepared, reviewed, signed and filed the abatement application in Nashua, Londonderry and Stratham. It is undisputed that no genuine taxpayer signature is contained in Section G ("Certification by Party(ies) Applying") of each abatement application. In the Nashua and Londonderry abatement applications, for example, Denise Eubanks (whose initials are "DE" and who works part-time for Mr. Lutter on billing and other clerical functions) signed this section using the name of an individual associated with each taxpayer entity. In the Stratham abatement application, Mr. Lutter signed the taxpayer's employee's name and added his initials ("ML"). In the Raymond abatement application, Section G of the form is blank. Indeed, Mr. Lutter testified that while he may have discussed the idea of filing an abatement application with the taxpayers in these appeals, they did not receive the abatement application until after it was filed, when he sent them a copy.

B. Parties' Representatives and Submittals

The board held the hearing on the dismissal motions on January 6, 2006. On that date, Mr. Lutter, who had filed the abatement applications with each municipality, the appeals with the board and "Objections" to the motions to dismiss, withdrew his appearance on behalf of each of the taxpayers, but testified on their behalves and remains as a designated "interested party" in each appeal. None of the taxpayers attended the hearing, but they were represented by Jay L. Hodes, Esq., who has filed an appearance in each appeal on their behalves. The municipalities were represented by: David R. Connell, Esq., Corporation Counsel, Angelo Marino, Chief Assessor and Robert Lakeman, Assessor, on behalf of Nashua; Karen Marchant, Assessor, on behalf of Londonderry; Normand Pelletier, Assessor, on behalf of Raymond; and Paul R. Deschaine, Town Administrator, and Andrea Lewy, Assessor, on behalf of Stratham.

The board heard arguments and received evidence with respect to each motion to dismiss. The board also received a "Memorandum of Law" with attached affidavits ("Taxpayer's Memorandum") and a "Supplemental Memorandum" on behalf of the taxpayers by Attorney Hodes and a "Memorandum. . ." and "Supplemental Memorandum" on behalf of Nashua by Attorney Connell. While the board stated at the hearing that it intended to issue separate orders with respect to each dismissal motion during deliberations the board determined, due to the similarity of the issues raised in motions, that a consolidated order was more efficient and appropriate.

II. Board's Rulings

Below are the board's detailed rulings based on its review of the applicable law and its findings of fact. In brief, the board grants the motions to dismiss filed by Nashua, Raymond and Stratham and denies the Londonderry motion to dismiss. In addition, the board is addressing its concerns regarding Mr. Lutter in the enclosed separate order in a new docket (No. 21527-06OS), specifying how it will proceed under its RSA 71-B:7-a and TAX Part 207 authority.

A. Common Concerns and Precedents

There can be no question Mr. Lutter did not comply with the explicit requirements of the statute and the rule quoted above (RSA 76:16, III(g) and TAX 203.02(d)). In ruling on these dismissal motions, the board must therefore decide whether the dismissal sanctions requested by the municipalities for this noncompliance is appropriate or not, in light of the facts pertaining to each appeal and the reasons for noncompliance offered by Mr. Lutter.

Attorney Hodes, on behalf of the taxpayers, argued against imposition of the dismissal sanctions (but took no position regarding possible sanctions against Mr. Lutter, whom he did not represent). Attorney Hodes asserted “RSA 76:11 [sic] favors resolution of abatement requests on the merits,” rather than dismissals on procedural grounds; in advancing this argument, he relies chiefly on GGP Steeplegate, Inc. v. City of Concord, 150 N.H. 683 (2004)¹. See Taxpayer’s Memorandum at pp. 2 -5.

The board has reviewed the Steeplegate decision carefully. In Steeplegate, the supreme court reversed and remanded to the superior court a tax abatement appeal where the superior court (Fitzgerald, J.) had granted the municipality’s motion to dismiss for ‘lack of jurisdiction.’ Id. at 684-85. The municipality in Steeplegate argued the taxpayer failed to meet the “good cause” requirement in the statute because the abatement application lacked specificity (in Section E, explanation of reasons supporting abatement). In filling out Section E, the Steeplegate taxpayer indicated an “Income

¹ In Steeplegate, the court stated:

The tax abatement scheme is written to make the proceedings free from technical and formal obstructions. [Citation omitted] It should be construed liberally, in advancement of the rule of remedial justice which it lays down. . . .

To ensure that tax abatement proceedings remain free from technical and formal obstructions, we conclude that the threshold for properly completing an abatement application is minimal. Therefore, a taxpayer who provides a brief explanation of the reason or reasons the taxpayer seeks an abatement remains entitled to seek tax relief. The language of RSA 76:16, IV and our well-established rule that tax abatement proceedings remain free from technical impediments support our conclusion that the selectmen or assessors may not deny an abatement application solely because a taxpayer failed to provide in the application a detailed explanation why the taxpayer is entitled to tax relief.

Id. at 686.

Approach Analysis does not support the current assessment.” Id. at 685. When the taxpayer failed to submit further information, the City’s assessors denied the application. In the appeal, the City argued the superior court lacked jurisdiction to hear the appeal. Id.; see also RSA 76:16, I and III (e). The supreme court rejected this argument and reversed the dismissal, ruling the superior court did have jurisdiction. While the court made reference to RSA 76:16, IV, id. at 686, this reference was not critical to the court’s holding.

Nine years before Steeplegate, the board addressed the issue of whether appeals should be dismissed when tax representatives fill out abatement applications only with “canned language” regarding the grounds for abatement (such as “over-valuation . . . at a value greater than the equalized fair market value and greater than assessed value of comparable properties”) but no specificity. In Maloney Associates, Inc., BTLA Docket No. 14291-93 PT, Order (December 1, 1994), rehearing denied (January 27, 1995), and sixteen similar cases, the board granted separate motions to dismiss filed by two municipalities (the Towns of Hanover and Gilford). Reviewing the amendments to RSA 76:16 and 76:16-a, the board in Maloney, et al., noted:

[I]t is clear that the legislature intended the local review [by the municipality] to be an essential part of the assessment and abatement process and that the board’s review was contingent upon a taxpayer complying with the local-review requirements. See House Journal.... Certainly, RSA 76:16 and RSA 76:16-a describes a two-step process. Taxpayers cannot take the second step to this board without having satisfactorily taken the first step of local review.²

Nashua and the other municipalities base their argument for dismissal of these appeals on a somewhat different proposition: not on specificity in the abatement application of the reasons for an abatement, but rather on whether the taxpayer is required to sign the abatement application, which Nashua calls a “fundamental element” and “a jurisdictional prerequisite for an appeal.” See Nashua’s Memorandum, pp. 3 and 4, citing Tyler Road Development Corp. v. Town of Londonderry, 145 N.H.

² The board further stated it had “attempted to decide this matter without references to the fact that the Taxpayers are represented by Agents. Nonetheless, it could be argued these Agents, who handle numerous abatement requests, should be required to know and comply with statutory requirements.”

615, 617 (2000) and Appeal of Sunapee, 126 N.H. 214, 216 (1985); and Nashua's Supplemental Memorandum at p. 3 ("based on the purpose and practical importance of the requirement . . . justice requires that the signature requirement not be waived retroactively").

In essence, the issue boils down to the question of whether the taxpayer signature requirement in the abatement application, a requirement stated both in the statute and the board's rules, as well as on the abatement form itself, is most properly viewed more like: (i) the absolute deadline for filing the abatement application (by March 1, prescribed in RSA 76:16, I); or (ii) an incidental matter simply affecting its 'completeness' (akin to the degree of specificity issue discussed in the Steeplegate case).

In Tyler Road, the supreme court held that if a party fails to request an abatement from the municipality on a part of its property (several lots), then "the court has no jurisdiction to abate them," even if the taxpayer later desires an abatement on those lots and had filed for an abatement on other similar lots that it owned; the court noted the superior court (and, by implication, the board's) statutory "jurisdiction to abate taxes is appellate only. See LSP Assoc. [v. Town of Gilford], 142 N.H. at 374, 704 A.2d at 798. It has no jurisdiction to abate taxes absent a prior request for an abatement filed with the town's assessors." Tyler Road, 145 N.H. at 619.

In Appeal of Sunapee, the supreme court found a taxpayer could not be awarded an abatement on appeal (with respect to a second lot on which he had not requested an abatement from the municipality), because: "Selectmen can be said to neglect or refuse only what a taxpayer has first requested. Hence, the jurisdiction of the board is limited to the subject of a taxpayer's original request to the selectmen." 126 N.H. at 216.

The board has thoroughly reviewed the evidence, arguments and authorities presented by each side on the issue of whether the absence of the taxpayer's signature on each abatement application means the applications were not timely filed and therefore that the appeals should be dismissed (as the municipalities argue) or, alternatively, whether each municipality was required to give further

opportunities to cure the omission, rendering dismissals unwarranted. While none of the authorities reviewed by the board are squarely on point and dispositive on this issue, the board, on balance and after additional research, concludes the omission is much more like the failure to meet the time deadline of March 1 (which results in loss of appeal rights, regardless of accident, mistake or misfortune or some other exculpatory reason) rather than being a relatively minor technical defect that can be cured after notice is given to the taxpayer or its representative. The board therefore disagrees with the arguments advanced by the taxpayers' attorney on at least two fundamental counts.

First, the board does not find the taxpayer signature requirement is a mere "technical" formality or an unnecessary "obstruction" to the abatement process that can be ignored by a taxpayer's representative at his or her discretion and without sanctions. To adopt such a view would mean a representative could file virtually any document by the March 1 deadline (including a blank form with just the taxpayer's name perhaps) and then wait for the municipality to request more information or fuller compliance with the statute. This approach would render the filing deadline meaningless in practical terms and increase the burdens on assessors who must handle large numbers of abatements filed around the March 1 deadline.³ The board reads the statutory framework to place respective obligations and burdens both on taxpayers (or their representatives, if they choose to use them) and on the municipalities; bending the rules for one in this area (such as by not applying the statute and rule requiring a taxpayer signature) increases the burden on the other.

Consistent with this approach, the courts and the board have uniformly enforced municipal filing deadlines relative to the tax process -- time deadlines that cannot be waived or relaxed even due to "accident, mistake or misfortune." See, e.g., Appeal of Brady, 145 N.H. 308, 309-10 (2000) (failure to file inventory form required by municipality results in loss of the right to appeal, regardless of whether it

³ The Nashua assessors stated their workload did not allow them to begin considering commercial abatement applications until June, some three months after the filing deadline.

was due to accident, mistake or misfortune and regardless of whether it was due to fault of the taxpayer); and Appeal of Estate of Van Lunen, 145 N.H. 82, 86 (2000) (board “properly refused to consider requests for tax abatements that were not timely filed with the town. (Citation omitted.)”

The requirement of timely filing is so strong that even “[o]ne day’s delay may be fatal to a party’s appeal.” Phetteplace v. Town of Lyme, 144 N.H. 621, 625 (2000), quoting from Dermody v. Town of Gilford, 137 N.H. 294, 296 (1993). The hard and fast rule applied in these decisions relative to untimely filings makes it clear that the outcome is not dependent on whether the municipality suffers harm or prejudice by reason of the late filing. For example, it is not likely that a delay of one day in filing an abatement application would harm or prejudice a municipality, but even such a minimal delay would result in a dismissal of the appeal.

There is even case authority to the effect that an attorney’s inadvertence in not filing a tax appeal by the statutory deadline (even when the paperwork for a filing “was prepared in proper form” (emphasis added), regardless of the taxpayer’s “intention” (to make a timely and complete filing, for example), is fatal to the appeal and results in dismissal. Arlington Book Sample Co. v. Board of Taxation, 116 N.H. 575, 576 (1976). As the court noted, “[T]he intent of the statute to cut off the statutory right at once upon termination of the stated period seems tolerably clear.” (Citation omitted.) Whether the late filing is due solely to oversight or omission by the taxpayer’s counsel, and whether excusable or not, the relief sought is barred. Paras v. Portsmouth, 115 N.H. 63, 66-67, 335 A.2d 304, 307 (1975); Missionaries of La Salette Corp. v. Town of Enfield, 116 N.H. 274, 356 A.2d 667 (1976).” Arlington, 116 N.H. at 576.

The Arlington case is of particular relevance because the inadvertence of a representative (an attorney) resulted in dismissal of the taxpayer’s appeal. While such an outcome might seem harsh, the law generally holds principals accountable for the actions or inactions of their agents. See, e.g.,

Holman-O.D. Baker Co. v. Pre-Design, Inc., 104 N.H. 116, 118-119 (1962), citing the Restatement, Second, Agency and other authorities.

In Paras v. Portsmouth, 115 N.H. 63, 67 (1975), a taxpayer contended “he should not be bound by his lawyer’s actions or inactions. . . .” In this tax appeal, the supreme court stated: “We cannot agree. An attorney is an agent of the client, provided his acts are within the scope of his authority. (Citation omitted.) Plaintiff is, therefore, bound by the acts of his attorney, including acts of omission or neglect. (Citations omitted.)” Id.

Because of legislation enacted in 1995 (RSA 71-B:7-a), “non-attorneys” (like Mr. Lutter and other tax representatives) may represent taxpayers in appeals before municipalities and the board. But such representation imposes corresponding responsibilities and obligations. As with attorney representation of a taxpayer, Mr. Lutter’s “acts of omission or neglect” are binding on the taxpayers who give him the authority to represent them. Further, Mr. Lutter’s authorization documents, (various examples of the “Agent Authorization” forms were received as evidence in these appeals) where the client/taxpayers granted Mr. Lutter authority to represent them, contains the following statement accepting full responsibility for his actions. “While we have delegated the above authority to this agent, we accept full responsibility for any and all actions he makes in our behalf.” (See, e.g., Taxpayer Exhibit 2 in Docket No. 21036-04PT.)

Second, the board finds the taxpayers’ statutory arguments regarding interpretation of RSA 76:16, III and IV to be without merit. Paragraph IV, added in 1991, clarifies that a taxpayer can provide the information required in paragraph III without necessarily using the abatement application form “prescribed by the board,” but the option granted by the legislature of not using the prescribed form does not mean the substantive requirements of paragraph III, including the “applicant’s signature” and a certification (“that the application has a good faith basis and the facts in the application are true”) can be omitted at the discretion of the tax representative.

A previous board order cited by the taxpayers, Greenhoe v. City of Laconia, BTLA Docket No. 19859-02 PT (March 25, 2004), does not require a different conclusion. In Greenhoe, the municipality gave the taxpayer's representative (Mr. Lutter) additional time (shortly after March 1) to submit the abatement application with taxpayer signatures, but Mr. Lutter missed the deadline by several days and then provided the municipality with faxed rather than original signatures; the municipality refused to accept the faxed document, and dismissed the appeal for "improper filing." On these special facts, the board found a two-day delay in complying with the municipality's discretionary request (because of taxpayer vacation schedules) and supplying faxed rather than original signatures should not result in dismissal of the appeal.

While a municipality can, if it wishes, provide additional time to a taxpayer's representative to complete a filed abatement application, it is not obligated to do so. Contrary to the authorities cited by Attorney Hodes involving other contexts, no court has required a municipality to 'help' a taxpayer representative, or a taxpayer for that matter, to fulfill his obligation to complete the required abatement application and file it by the March 1 deadline. The board finds no basis to do so here.

Similarly, the board does not agree that questioning the "good faith" of each municipality or whether each can show "prejudice, surprise or undue advantage" is necessary to decide the motions to dismiss. See Taxpayer's Memorandum at pp. 4 and 6. The interests of the tax representative and the assessor are, by their very nature, at odds with each other. Insisting on compliance with statutory and regulatory requirements, even if some laxity may have been tolerated in the past, does not mean the municipalities' motions to dismiss are without merit.⁴

⁴ The taxpayers have not made a waiver or estoppel argument in these appeals based on what each municipality's assessors may or may not have permitted in prior tax years. In addition, given the authorities discussed above, the board does not agree with Attorney Hodes' argument that the municipalities were under an obligation to provide assistance to the taxpayers' representative to insure that each tax abatement application was properly completed and filed; the zoning application and other cases cited by Attorney Hodes (see Taxpayer's Memorandum, pp. 6-8) are therefore readily distinguishable.

A practical concern expressed by the municipalities should also be mentioned. Their assessors expressed a frustration when abatement applications are not signed by the taxpayers. In those situations, the municipalities may be uncertain exactly whom they were dealing with and whether or not there is a legitimate basis (or “good cause” under RSA 76:16) for challenging the assessment. This uncertainty can delay and degrade the assessment review and abatement process and is a further policy consideration supporting enforcement of the signature requirement stated in the statute, the rule and the abatement form itself.

B. Specific Findings and Rulings

1. The Three Nashua Appeals (Docket Nos. 21029-04PT, 20916-04PT and 20924-04PT)

These three appeals filed on behalf of taxpayers Belmar/PAG Limited Partnership, Bellevance Realty Corp. and Community Bank & Trust Co., respectively, have some commonalities. In each, Mr. Lutter filed the abatement application without a genuine taxpayer signature in Section G. Instead, as noted above, a clerical employee for Mr. Lutter (Denise Eubanks, whose initials are “DE”) handwrote the name of an employee or officer of each corporation (John Bentz for Belmar/PAG, Joseph Bellavance IV for Bellevance Realty Corp. and Brad Giles for Community Bank, respectively). There is no indication any of these taxpayers saw the abatement application prepared and filed by Mr. Lutter before it was submitted to the municipality.

The City stated it completed its review of the applications in June, 2005 and denied each of them on the grounds of “IMPROPER FILING. NO SIGNATURE OF TAXPAYER AND NO LETTER OF AUTHORIZATION FROM TAXPAYER.” (See the documents attached to Nashua’s motion to dismiss each appeal.) Mr. Lutter did not offer or provide written authorizations to the City in response to the denials.

Instead, in his Objections to the dismissal motions before the board Mr. Lutter submitted various taxpayer “Agent Authorization” forms prepared by his office. He admitted at the hearing that in many,

if not all, instances the taxpayers signed these authorization forms in blank, and Mr. Lutter then completed and dated the blank authorizations when he felt it was necessary to do so. In this regard, Mr. Lutter's Objection with respect to:

- a. Belmar/PAG -- contains two Agent Authorizations, one dated "2/8/00" and one dated "11/21/05";
- b. Bellevance Realty -- contains an Agent Authorization (with "Realty" written over another erased name) dated "12/28/04" (as well as two other agent authorizations of the same date for Bellevance Beverage and ProSit, LLC, who are apparently taxpayers also associated with Mr. Bellevance); and
- c. Community Bank -- contains an Agent Authorization dated "9/04/05."

Mr. Lutter argues these authorizations, even if not submitted at the time of the abatement application and even if dated well before or after the filing deadline (March 1, 2005), are legally sufficient to satisfy the taxpayer signature requirement. The board disagrees.

The tax year 2004 abatement applications were filed by Mr. Lutter on behalf of these taxpayers well after the board's decision in Greenhoe v. City of Laconia, cited and discussed above. That Order was issued on March 25, 2004, almost one year before the timely filing deadline for tax year 2004 appeals (March 1, 2005). Mr. Lutter was the representative in that appeal. In Greenhoe, the board emphasized the importance of the signature requirement contained in RSA 76:16, III and TAX 203.02 (d). As a result, Mr. Lutter was well aware of these concerns and the need to comply with the statutes and board rules. Nonetheless, Mr. Lutter decided, for reasons of his own, not to have his clients sign each abatement application.

The board also notes that Mr. Lutter filed a petition for rule change on June 1, 2005, three months after the filing deadline for tax year 2004 appeals. The board's June 30, 2005 Order with respect to that petition does not support his position that the above taxpayer authorizations are sufficient to

avoid motions to dismiss. In that Order, the board confirmed the requirement of taxpayer signatures on abatement applications and confirmed officers could sign on behalf of corporations. The board further allowed for a very limited exception to the taxpayer signature requirement, as follows:

T]he rule should not be read so narrowly to prohibit an individual who has received limited direct authority from the person aggrieved by the tax to represent [the taxpayer] as long as the power of attorney or agent authorization is attached with the abatement application and: 1) is obtained subsequent to the final notice of tax but prior to March 1 following the notice of tax; and 2) is specific to the person aggrieved, the municipality and property for which the abatement is sought, and the year at issue. If such document, duly submitted with the abatement application, is questioned by the municipality, then the taxpayer, on appeal to the board, can argue the abatement application was properly and timely filed with such attached authorization.

It is clear, however, that the authorizations described above for the three Nashua taxpayers do not satisfy the requirements for the exception described in the board's Order. In addition to their other deficiencies, they were not submitted to the municipality either at the time of the abatement application or after Mr. Lutter received notification of the denials: instead, they were presented to the board in Mr. Lutter's Objection to the motions to dismiss.

For all of these reasons, the board grants Nashua's motions to dismiss each of the three appeals.

2. The Raymond Appeal (Docket No. 21036-04PT)

In Raymond, Mr. Lutter did not provide a taxpayer signature in Section G of the abatement application and did not submit an authorization to represent the taxpayer (Chittenden Corp.) to the municipality. On June 14, 2005, the Town Assessor (Normand Pelletier) wrote to Mr. Lutter indicating he had reviewed the abatement application and did not agree the taxpayer had been overassessed, indicating he would "leave your application open to submit further information should you so desire." See Taxpayer Exhibit 1. Apparently, no further submission was made by Mr. Lutter.

On November 4, 2005, Raymond moved to dismiss the appeal for lack of taxpayer authorization. Raymond copied Mr. Lutter and the taxpayer with this motion. No timely objection was made to the motion either by Mr. Lutter or the taxpayer. At the hearing, however, an Agent Authorization dated "12/19/97" naming "First Savings" was presented by Attorney Hodes as Taxpayer Exhibit 2. It appears

that First Savings was a predecessor in interest to Chittenden and occupied the property at that time. In addition, the Taxpayer's Memorandum submitted at the hearing includes an Affidavit of Christopher Bishop, as "a duly authorized agent of Chittend[e]n," mentioning the 1997 authorization and asserting that authorization "remains effective until revoked, and Chittenden Corporation has not revoked the authorization."

Notwithstanding the 1997 "First Savings" authorization and the Bishop affidavit, and based upon the authorities and reasons already discussed above, the board finds the abatement application was not completed in a legally sufficient manner. The taxpayer failed to comply with RSA 76:16, III (g) and TAX 203.02 (d) at any time during the abatement process. Raymond's motion to dismiss the appeal is therefore granted.

3. The Stratham Appeal (Docket No. 21038-04PT)

In Stratham, Mr. Lutter signed an employee's name (Chris Bishop) in Section G of the abatement application (adding his own initials "ML"). Stratham filed its December 14, 2005 motion to dismiss with the board and Mr. Lutter filed a timely "Objection."

The Objection filed with the board relies on a "12/12/97" authorization naming "First Savings Bank" (rather than Chittenden) and a blank (no name of taxpayer) authorization signed by Christopher D. Bishop dated "2/25/05." Significantly, Mr. Bishop's Affidavit submitted with the Taxpayer's Memorandum mentions only the 1997 authorization, not the "2/25/05" authorization. For this and other reasons, the board finds Mr. Lutter did not submit the second authorization to Stratham during the abatement process, but only did so with his Objection filed with the board on December 28, 2005.

As with the Nashua and Raymond appeals, the board finds the abatement application in Stratham was not completed in a legally sufficient manner. The taxpayer failed to comply with RSA 76:16, III (g) and TAX 203.02 (d) at any time during the abatement process. Stratham's motion to dismiss the appeal is therefore granted.

4. The Londonderry Appeal (Docket No. 20984-04 PT)

As noted above, in Greenhoe, the City of Laconia chose to give the tax representative more time and that fact influenced the board's ruling. The most similar of the current appeals involves Londonderry, where the assessor (Karen Marchant), by letter dated June 22, 2005, gave Mr. Lutter additional time (to "no later than July 7, 2005") to submit an "**original**" letter of authorization for Mr. Lutter to represent the taxpayer (AGC Corporation). In her June 29, 2005 letter, Ms. Marchant made it clear she would not accept an authorization from a "previous" year for the tax year 2004 abatement. On July 7, 2005, however, Mr. Lutter faxed his letter to Ms. Marchant, indicating Tony Galluzzo would be mailing a signed taxpayer authorization to her on that day. (At the hearing, Ms. Marchant testified Mr. Galluzzo hand-delivered a signed authorization on July 8, 2005.) Rather than accepting the authorization (one day late), Ms. Marchant's July 21, 2005 letter to the taxpayer denied the abatement "because application was not complete, and your tax representative did not meet the deadline July 7, 2005 . . ."

On these special facts, the board finds the Town's denial of the abatement application to be unwarranted and overly arbitrary. While any unexcused delay is undesirable, the Town knew by the deadline it gave Mr. Lutter that the taxpayer would be submitting the requested authorization. The taxpayer should not be unduly penalized simply because the authorization was physically delivered to the Town one day late for the reasons stated at the hearing. (Mr. Lutter indicated, for example, that he had requested an extension of time to comply because of his own vacation plans (until July 6, 2005) but Ms. Marchant refused this request and Mr. Galluzzo faxed an authorization to her by the deadline (July 7, 2005). See Taxpayer "Objection," p. 1. Ms. Marchant may not have received the fax on that date, but apparently this was due to the fax machine being located in a different building at the municipality's offices.)

The board will therefore remand taxpayer AGC Corporation's abatement request to Londonderry for a decision on the merits. Londonderry is directed to act within 60 days and notify the taxpayer of its decision on the abatement application. The taxpayer is given an additional 30 days after notification from Londonderry to advise the board in writing whether it wishes to maintain or withdraw its appeal.

C. Summary

As noted above, the board is granting the three motions to dismiss filed by Nashua and the separate motions to dismiss filed by Raymond and Stratham, but denying the motion to dismiss filed by Londonderry and remanding that appeal. The board is also initiating a review of Mr. Lutter's conduct as a tax representative subject to RSA 71-B:7-a and TAX Part 207.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing Consolidated Order has this date been mailed, postage prepaid, to: Chairman, Board of Assessors, City of Nashua, PO Box 2019, Nashua, NH 03061; Chairman, Board of Selectmen, Town of Londonderry, 50 Nashua Road, Suite 100, Londonderry, NH 03053; Chairman, Board of Selectmen, Town of Raymond, 4 Epping Street, Raymond, NH 03077; Chairman, Board of Selectmen, Town of Stratham, 10 Bunker Hill Avenue, Stratham, NH 03885; Jay L. Hodes, Esq., Hodes Buckley McGrath & LeFevre, 440 Hanover Street, Manchester, NH 03104, Taxpayer Representative; David R. Connell, Esq., Nashua Office Of Corp. Counsel, 229 Main, Box 2019, Nashua, NH 03061; Mark Lutter, Northeast Property Tax Consultants, PO Box 735, Derry, NH 03038, Interested Party; John Bentz, Belmar/PAG Limited Partnership, 4 Cathedral Square Suite 1G, Providence, RI 02903, Taxpayer; Joseph Bellavance, IV, Bellavance Realty Corp., 120 Northeast Boulevard, Nashua, NH 03063, Taxpayer; Brad Giles, Community Bank & Trust Company, 15 Varney Road, Box 59, Wolfeboro, NH 03894; Tony Galluzzo, AGC Corporation, 14 Liberty Drive, Londonderry, NH 03053, Taxpayer; and Chris Bishop, Chittenden Bank, 2 Burlington Square, Burlington, VT 05402-0820, Taxpayer.

Date:3/8/06

Anne M. Stelmach, Clerk